

807 KAR 5:090. System development charges for water utilities.

RELATES TO: KRS 278.012, 278.015, 278.030, 278.040, 278.160, 278.180, 278.190, 278.200, 278.230, 278.310

STATUTORY AUTHORITY: KRS 278.040(2), (3), 278.200, 278.230(3), 278.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) provides that the commission may promulgate reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.040(2) grants the commission exclusive jurisdiction over utility rates and services. KRS 278.200 authorizes the commission to originate, establish, change or promulgate any rate standard that has been or may be fixed by any contract or agreement between a utility and any city. KRS 278.030 authorizes a utility to collect fair, just and reasonable rates for its services. KRS 278.230(3) requires a utility to file with the commission any reports or other information that the commission may reasonably require. KRS 278.310 authorizes the commission to adopt rules to govern the conduct of its hearings and investigations. This administrative regulation prescribes filing requirements and procedures to be followed by a public water utility applying for authority to assess a system development charge or a municipal water utility applying for authority to assess a system development charge to a public water utility.

Section 1. Definitions. (1) "Municipal water utility" means any city that provides the services enumerated in KRS 278.010(3)(d) to a public water utility.

(2) "Public water utility" means any person including a water district or water association, except a city, who owns, controls, operates or manages facilities that are used or to be used to provide the services enumerated in KRS 278.010(3)(d).

(3) "System development charge" means a one (1) time charge assessed by a water utility on a real estate developer, on a new customer, or on an existing customer who significantly increases its demand for water service to finance construction of a system improvement necessary to serve that customer or a proposed real estate development.

(4) "Water utility" means any municipal water utility or public water utility.

Section 2. A municipal water utility shall assess a system development charge upon a public water utility only after obtaining commission approval. A public water utility shall assess a system development charge only after obtaining commission approval.

Section 3. To apply to assess a system development charge, a public water utility shall file with the commission an application that includes the following:

- (1) All documents and information required by 807 KAR 5:001, Section 14;
- (2) A statement of the reason the system development charge is required;
- (3) The prepared testimony of each witness the applicant proposes to call in a hearing on its application;
- (4) A general description of the applicant's property and the field of its operation, together with a statement of the original cost of the property and cost to the applicant;
- (5) A general description of how the applicant's property has been financed;
- (6) A capital improvement plan that:
 - (a) Covers a minimum of ten (10) years from the date of the filing of the application;
 - (b) Projects the amount of and characteristics of projected growth and the demand that growth will place on the system;
 - (c) States the amount of projected growth for each customer class;
 - (d) States the proposed level of service after the completion of planned improvements;

(e) Determines the cost of system upgrades and improvements needed to provide the desired level of service;

(f) States when and where the proposed system upgrades and improvements would be needed;

(g) Contains a deficiency analysis of the applicant's current system and identifies the system improvements necessary to provide adequate service at existing and future demand levels; and

(h) If improvements are needed to provide adequate service to existing customers at existing demand levels, identifies the portion of the system improvement that will serve existing customers;

(7) A statement describing when the proposed system development charge will be assessed and explaining why the proposed time for assessment is reasonable;

(8) A statement that notice has been given in compliance with Sections 6 and 7 of this administrative regulation;

(9) A proposed tariff sheet that complies with 807 KAR 5:011, that proposes an effective date not less than thirty (30) days from the date the application is filed, and that sets forth the procedures and rules governing assessment of the proposed system development charge;

(10) A certified copy of the resolution or ordinance of the applicant's governing body authorizing the assessment of the proposed system development charge and the filing of an application with the commission; and

(11) If the applicant proposes to assess a system development charge upon another water utility, a copy of the water utility's current water supply agreement with each effected water utility and a statement explaining why the rates contained in the contract are inadequate and why an assessment of a system development charge to that water utility is necessary.

Section 4. To apply to assess a system development charge to a public water utility, a municipal water utility shall file with the commission an application that includes the following:

(1) All documents and information required by Section 3(1) through (10) of this administrative regulation; and

(2) A copy of the municipal water utility's current water supply agreement with each affected public water utility and a statement explaining why the rates contained in the contract are inadequate and why an assessment of a system development charge to that public water utility is necessary.

Section 5. The commission shall consider a proposed system development charge reasonable if the applicant demonstrates that the proposed charge:

(1) Offsets an increase in cost to fund system expansion to accommodate new growth and demand;

(2) Recovers only the portion of the cost of a system improvement that is reasonably related to new demand; and

(3) Is based upon the cost of a new facility that will increase or expand capacity.

Section 6. Form of Notice. A water utility filing an application pursuant to this administrative regulation shall notify the public in the manner prescribed in this section. The notice shall include:

(1) The amount of the requested system development charge;

(2) A statement that "The rates contained in this notice are the rates proposed by (name of utility); however, the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice";

(3) A statement that any corporation, association, or person with a substantial interest in the matter may, by written request, within thirty (30) days after publication or mailing of the notice of the proposed rate changes request intervention;

(4) A statement that any person who has been granted intervention by the commission may obtain a copy of the rate application and any other filing made by the water utility by contacting the water utility at an address and phone number that is stated in the notice; and

(5) A statement that "Any person may examine the rate application and any other filing made by (the water utility) at (the main office of the water utility) or at the commission's office at 211 Sower Boulevard, Frankfort, Kentucky 40601".

Section 7. Manner of Notification. A water utility shall give the required notice by publishing the notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in its service area, the first publication to be made within seven (7) days of the filing of the application with the commission. It shall file with the commission no later than forty-five (45) days of the filed date of the application an affidavit from the publisher verifying that the notice was published, stating the dates of the publication, and attaching a copy of the published notice. The water utility shall also post a copy of the required notification at its place of business no later than the date on which the application is filed, and the notice shall remain posted until the commission has ruled upon the water utility's application.

Section 8. After reviewing a water utility's application, the commission shall issue an order approving, modifying or rejecting the proposed capital improvement plan and system development charge.

Section 9. Unless a water utility proposes to assess a system development charge upon another water utility, a system development charge shall be based upon a meter or residential equivalent.

Section 10. Offsets and Credits to Charges. A water utility shall reduce or offset a system development charge to an applicant for service if the applicant has constructed facilities or physical improvements in excess of its own system requirements that will benefit another part of the water utility's system. A water utility shall waive a system development charge for any applicant for service electing to construct a utility facility needed to provide the applicant with water service only if the amount paid for the construction is greater than the system development charge.

Section 11. Use of System Development Charge Funds. (1) A water utility shall place all collections from an approved system development charge in a separate interest-bearing account and shall not commingle collected system development charges and interest income on those charges with other utility funds.

(2) A water utility shall use funds from the separate interest-bearing account exclusively for:

(a) The purposes set forth in the capital improvement plan that the commission has approved; or

(b) Reimbursement or repayment to other accounts from which funds have been taken to pay for growth-related capital projects that are set forth in the approved capital improvement plan.

(3) If a water utility has failed to provide water service at the requested level within five (5) years after the collection of the system development charge began, or if amounts collected from a system development charge have not been spent on the approved capital improvement

plan within five (5) years of the date the system development charge began, the water utility shall refund with interest the collected system development charge. Interest shall be computed in accordance with KRS 278.460.

Section 12. Records and Reports. A water utility authorized to assess a system development charge shall:

- (1) Maintain a record showing the amount and date of each collection;
- (2) Maintain a record showing the amount and purpose of all disbursements from its interest-bearing account;
- (3) Notify the commission in writing within sixty (60) days of the date it is authorized to assess a system development charge of the location of and provisions governing its interest-bearing account; and
- (4) File annually a report that shows for the previous calendar year:
 - (a) The amount collected pursuant to its system development charge;
 - (b) The disbursements of funds from its interest-bearing account; and
 - (c) The status of all projects included in its approved capital improvements plan.
- (5)(a) A public water utility shall file the report required by subsection (4) of this section with its annual financial and statistical report filed pursuant to 807 KAR 5:006, Section 4(2).
- (b) A municipal water utility shall file the report required by subsection (4) of this section no later than March 31 of each year following the approval of its application to assess a system development charge.

Section 13. Amendments to Approved Capital Improvement Plans. The water utility may apply for commission approval of an amendment to its capital improvement plan to reflect subsequent developments or new information.

Section 14. Deviations from Administrative Regulation. In special cases, for good cause shown, the commission may permit deviations from this administrative regulation. (28 Ky.R. 1534; 2048; 2209; eff. 4-15-2002; TAm 1-30-2013; Crt eff. 3-27-2019.)